27th Congress, 2d Session. Rep. No. 928. Ho. of Reps.

RICHARD COKE, Jr., ROBERT ANDERSON, AND GEORGE W. SOUTHALL.

[To accompany bill H. R. No. 546.]

July 21, 1842.

Mr. J. A. Pearce, from the Committee on the Judiciary, made the following

REPORT:

The Committee on the Judiciary, to whom was referred the petition of Richard Coke, jr., Robert Anderson, and George W. Southall, report:

That the petitioners seek to be relieved, in part, from their liability as sureties of Peyton A. Southall, late a purser in the Navy of the United States. The facts of the case have been carefully inquired into by the committee, and found to be as follows:

In April, 1832, Peyton A. Southall was appointed a purser in the navy, and the petitioners became the sureties in his official bond, with a penalty of $25,000. Immediately after the execution of this bond, Mr. Southall was attached to the schooner Experiment, then about to proceed to the West India station, on board of which vessel he continued in the capacity of purser until about the 9th July, 1835, rather more than 3 years. During this period considerable sums of money were placed in the hands of the said purser, who did not render his accounts according to the requirements of the law, or the regulations of the naval service; nor was a settlement of his accounts had until nearly a year after the completion of his cruise, to wit: in May, 1836, when a balance of $4,458 62 was found due by him to the United States. In June, 1836, Mr. Southall made a payment of $2,500 to the Government, which still left him a defaulter, without explanation or excuse, to the amount of $1,958 62. While that debt remained unpaid, he was ordered to the sloop Boston. During the cruise of the Boston, and afterwards, he again neglected to render his accounts regularly, and, upon a settlement had in May, 1840, he was found indebted to the United States in the sum of $43,159 17, including the former balance of $1,958 62. He was *then* promptly dismissed from the service, and suit was brought against the sureties.

The petitioners ask to be released from the payment of all this sum for which suit has been brought against them, except the former balance of $1,958 62, and for these reasons: among the regulations of the naval service, issued in 1818, is one in the following words: "*Before a purser can* receive orders to join a ship or station, or be removed from one ship or station to another, he must produce a certificate from the Fourth Auditor of the Treasury, or other satisfactory evidence, that he has settled up his

accounts for the last ship or station to which he belonged, and that the balance against him does not exceed one thousand dollars." This regulation was directly disregarded in the appointment of Mr. Southall to the Boston while he was a known defaulter, as purser of the Experiment, to an amount nearly double the limit expressed in the regulation above mentioned.

The act of January 31, 1823, requires every officer or agent of the United States, who shall have received public money which he is not authorized to retain, to render his accounts quarter yearly, within three months after each successive quarter, if resident within the United States, and within six months, if resident in a foreign country. The same act provides that every officer or agent who shall not comply with that requirement, shall, by the officer charged with the direction of the Department to which such officer or agent is responsible, be promptly reported to the President of the United States, and dismissed from the public service, unless he shall account, to the satisfaction of the President, for such default.

The accounting officers appear to have performed their duty in this case, but the committee have not been able to ascertain why the regulations of the naval service, and the imperative requirements of the law, were not enforced against Mr. Southall. His appointment to the sloop Boston was clearly in violation of both.

Cases may occur where the defalcation arises from accident and misfortune, not affecting the competency and honor of the officer. In such, the forbearance of the Secretary to enforce the regulations of the service, or of the President to dismiss the officer, according to the requirement of the law, may be justifiable, and, indeed, every way proper. But the committee cannot ascertain that any such circumstances justified the forbearance towards Mr. Southall, whose case appears to be such as called for the enforcement of the law. They therefore think that the lenity shown him (so far as the facts before the committee authorize a conclusion) was inexcusably injurious to the Government and the sureties, affording the delinquent, as it did, fresh opportunities of wasting the public money, and subjecting the petitioners to further liabilities, which otherwise they would have avoided.

The Boston returned to the United States in May, 1839. During this cruise Purser Southall again neglected to render his accounts, and it was not until July, 1840, that a settlement with him was had at the Treasury, although he had been repeatedly called on by the Fourth Auditor, who had as often reported his default. From the copy of the account then made up, it appears that, in October, 1839, after the return of the Boston from her cruise, Purser Southall, then a known defaulter, as purser of the Experiment, who had been ordered to the Boston, in violation of the laws and rules of the navy, and whose accounts, during his last service, had not been rendered as his duty required, was furnished with the sum of $40,025, which the regular rendition of his accounts would have shown not to be wanted for the service if the other funds in his hands had been properly applied.

It is believed that, between individuals, if a principal should make advances to his agent, after the infidelity of that agent was known to him, the guarantees of such agent would be released from any liability for advances so made. This principle seems to the committee equitable as be-

tween the Government, its officers, and their sureties. Besides, in this case the sureties had a right to expect that the laws and regulations of the navy would be enforced, or at all events that they should not be injured by the neglect to enforce them.

These provisions of the law and the navy regulations, it is presumed, were intended to be enforced according to these terms, and not meant merely *in terrorem* to the officer, or only as a trap to the sureties.

If so, the petitioners had a right to confide in their enforcement, and the neglect to apply them in Mr. Southall's case furnishes a good and equitable defence to his sureties.

Your committee therefore report a bill